SAICA
THE SOUTH AFRICAN INSTITUTE OF CHARTERED ACCOUNTANTS

Legal Update
Volume 15 Issue 1, 20 January 2020

This Update

This newsletter overviews new relevant National laws up to **20th January 2020**.

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Please do not hesitate to contact us should you have any queries or comments.

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General

1. NOTABLE ONE LINERS

Animal Diseases Act

Control measures relating to foot and mouth disease in certain areas (live auction of cloven hoofed animals) have been gazetted.

Animals Protection Act

The Member Amendment Bill 2018 has lapsed - it proposed, amongst others, making it an offence to test a cosmetic on an animal, or to fail to give adequate space to an animal.

Aquaculture Development Bill

The current status of the Bill seems to be lapsed.

Auditing Profession Act

Board notices 144 of 2017 and 98 of 2018, that related to proposed amendments to the disciplinary rules, have been withdrawn for technical reasons.

Basic Conditions of Employment Act🚩

(i) The Labour Laws Amendment Act 10 of 2018, amended the main Act on 1 January 2020 to provide for further parental leave (10 days parental leave from date child is born, adoption order is granted, or child is placed in the care of a prospective adoptive parent), adoption leave (10 consecutive weeks or parental leave for adoptive parent of a child below the age of two); and commissioning parental leave (10 consecutive weeks or parental leave for a commissioning parent in a surrogate motherhood agreement).

Note: Also consider the related amendments proposed to definitions, family responsibility leave, and variation by collective agreement.

(ii) A proposal has been gazetted to deem persons in the film and television industry to be employees for some parts of the Basic Conditions of Employment Act and Labour Relations Act. Comment deadline: 60 days from 11 December 2019.

Carbon Tax Act

(i) The Taxation Laws Amendment Act 2019, amongst others, clarified the application of the Act to a municipality that generates electricity; aligned the Act with DEFF technical guidelines for mandatory greenhouse gas reporting regulation; clarified what different types of emissions methodologies that may be used; provided for CPI adjustments; and clarified the discretionary nature of the offset allowance.

(ii) The regulations on carbon offsets are deemed to have commenced 1 June 2019.

(iii) The draft trade exposure regulations, and the draft greenhouse gas emissions intensity benchmarks, are available from SARS. Comment deadline was 17 January 2020.

Commissions Act

The terms of the Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the Public Sector including Organs of State have been amended to, amongst others, provide that it is an offence for a person to appear before the commission and not answer fully and satisfactorily any question lawfully put to him or her.

Note: The legal exception for the law relating to privilege as applicable to a witness is confirmed.

Companies Act 🚩

A notice 52 companies compliance checklist on e-services, to be completed as from 1 January 2020 before an annual return is submitted, is available from the CIPC.

Note: The purpose of the checklist is to declare the compliance status of a company to specific sections of the Companies Act.

Compensation for Occupational Injuries and Diseases Act

Notice gazetted of the data cleansing on all active pensions in the compensation fund.

Competition Act

(i) The grocery retail market inquiry report, data services market inquiry report, and private healthcare market inquiry report have all been completed, and are available from the Competition Commission.

(ii) The SA Petroleum Industry Association conditional exemption (required to ensure the continuity and stability of liquid fuels supply) has been extended to 31 December 2020.

Critical Infrastructure Act

A commencement date must still be gazetted for the Act - you may wish to revisit the past overviews for this future law.

Customs and Excise Act

The Taxation Laws Amendment Act 2019 amended the continuation of schedules.

Deeds Registries Act

Once a commencement date has been gazetted, the Electronic Deeds Registration Systems Act 2019 will provide that the registration, execution and filling of deeds and documents prescribed by the Deeds Registries Act and the Sectional Titles Act will continue under those laws until the Electronic Deeds Registration system is in place. *Note: Section 2 of that Act (development, establishment and maintenance of electronic deeds registration system) commenced 2 December 2019.*

Electronic Communications Act

(i) The inquiry into the effectiveness of the must carry regulations is available from ICASA. Comment deadline 6 March 2020.

(ii) Comment deadline extended to 27 February 2020 for comments on the discussion document on the inquiry into mobile broadband services (meant to assess the state of competition and determine

whether or not there are markets or segments within the value chain that may warrant section 67 regulation).

Employment Tax Incentive Act

(i) The Taxation Laws Amendment Act 2019 amended sections 1 (clarify interaction with SEZ), 4 (align with national minimum wage), 6 (clarify interaction with SEZ, and update one income band adjustment inadvertently left out), and 7A (align Act with tax charging provisions made to all tax Acts).

(ii) The Rates and Monetary Amounts and Amendment of Revenue Laws Act 2019 confirmed amendments made to amounts in section 7.

Estate Duty Act

The Taxation Laws Amendment Act 2019 amended section 3 (to address section 3(2)(bA) erroneously including not only excess contributions in terms of sections 11(k), 11(n) or 11F, but also amounts which are not taken into consideration in terms of the Second Schedule of the Income Tax Act).

Financial Sector Regulation Act

Amendments were proposed relating to the appointments process for the FSCA Commisisoner and Deputy Commissioner. Comment deadline 24 January 2020.

iKamva Digital Skills Institute Bill

The current status of the Bill seems to withdrawn

Income Tax Act🚩

(i) The Seventh Schedule paragraph 7 retail market value of right of use of a motor vehicle will be amended on 1 March 2020.

(ii) Reminder that the Taxation Laws Amendment Act 2017 will amend section 10(o) (exemption relating to services rendered outside SA) on 1 March 2020.

(iii) The Rates and Monetary Amounts and Amendment of Revenue Laws Act 32 of 2019 confirmed amendments made to amounts in section 6, and the Seventh Schedule paragraph 9.

Insurance Act

An application for a licence to conduct insurance business in SA guideline and form is available from the FSCA.

Interim Protection of Informal Land Rights Act

This interim measure, now extended (for the 23rd time since the original proposed end-date) to 31 December 2020, provides that:

(i) Informal rights to land cannot be taken away without the consent of the person holding that right; and

(ii) Any sale or other disposition of any land is subject to any existing informal rights to that land.

Legal Practice Act

The annual fees for practitioners were amended on 1 January 2020.

Long-term Insurance Act

(i) The exemption, from policyholder protection rule 2A.10.1, of microinsurers that offer credit life microinsurance policies, and conditions attached to such exemption, is available from the FSCA.

(ii) A draft exemption notice for independent intermediaries from regulation 8.2(2) is available from the FSCA. Comment deadline 24 January 2020.

Mine Health and Safety Act

Guidance notes gazetted have been gazetted for working in confined spaces;; HIV counselling and testing; HIV self-testing; management of self-contained self-rescuers; and prevention of flammable gas and coal dust explosions in collieries

Mineral and Petroleum Resources Development Act

(i) The draft Upstream Petroleum Resources Development Bill proposes removing provisions and references relating to petroleum from the Act.

(ii) The current status of the Amendment Bill 2013 seems to be lapsed.

(iii) Amendments have been proposed to the general regulations. Comment deadline was 30 days from 28 November 2019.

(iv) The Housing and Living Conditions Standard for the Minerals Industry 2019 commenced 11 December 2019.

(v) Draft mine community resettlement guidelines are available from the Department of Mineral Resources and Energy. Comment deadline was 30 days from 4 December 2019.

Municipal Fiscal Powers and Functions Act

The Draft Amendment Bill 2020 proposes, amongst others, introducing development charges, including sanction in the event of financial misconduct by an official of a municipality. Comment deadline 31 March 2020.

National Environmental Management Act

(i) The transitional period for the regulations pertaining to the financial provision for prospecting, exploration, mining or production operations has been extended to 19 June 2021.

(ii) Draft procedures for the assessment and minimum criteria for reporting of identified environmental themes (terrestrial species) have been gazetted. Comment deadline 30 days from 10 January 2020.

National Environmental Management Air Quality Act

Amendments have been proposed to the phasing-out and management of ozone depleting substances regulations. Comment deadline: 60 days from 13 December 2019.

National Environmental Management Biodiversity Act

A biodiversity management plan for the Bontebok (*Damaliscus pygargus pygargus*) is available from the Department of Environment, Forestry and Fisheries.

National Environmental Management Waste Act

The notice to the paper and packaging, electrical and electronic and lighting industries to submit waste management plans has been withdrawn.

National Forests Act

A new list of protected tree species has been gazetted (i.e. trees and their product that require a licence or exemption before they may be cut, disturbed, damaged, destroyed, possessed, collected, removed, transported, exported, purchased, sold, donated or in any other manner acquired or disposed of).

National Health Act

The Member Amendment Bill has lapsed - it proposed measures to legally recognise, and provide legal certainty and enforceability to, advance health care directives for a living will and a durable power of attorney for health care.

National Key Points Act

The Critical Infrastructure Protection Act will repeal this Act, and will deem declared national key points or complexes to be critical infrastructure pending a later suitability report (once a commencement date has been gazetted).

National Water Act

Instruction to all water users who are not members of an Irrigation Board or Water Users Association, at the water user's expense to install water measuring devices for all the water taken for commercial irrigation purposes according to within 30 working days of 17 January 2020.

Note: The selection, installation, operation and maintenance of water measuring devices, and submission of water measurement records, must comply with Notice 131 of 2017.

Pension Funds Act

A directive on the prohibition on the acceptance of gratification, to address the existing conflict of interest relating to principal officers appointed on boards of funds while also being employed by service providers, is available from the FSCA.

Petroleum Products Act

Draft guidelines to applicants for new industry site and retail licences have been gazetted.

Public Administration Management Act

Draft office of standards and compliance regulations gazetted. Comment deadline was 30 days from 29 November 2019.

Public Finance Management Act

Amendments relating to Accounting Standards Board arrangements (remuneration and ex officio members) have been made.

Rates and Monetary Amounts and Amendment of Revenue Laws Act

The Act confirmed rate amendments made.

Refugees Act

The Refugees Amendment Act 2017 overhauled the Act, including making it an offence for an employer or educational institution to fail to give a prescribed letter 14 days after an asylum seeker with a visa has been employed or enrolled. *Note: That Amendment Act must be read with Amendment Acts 33 of 2008 (which commenced 1 January 2020) and 12 of 2011, and commenced right after those Acts commenced.*

Regulation of Gatherings Act

The Member Amendment Bill 2018 has lapsed - it proposed prohibiting, subject to certain permissions, demonstrations and gatherings in vicinity of schools, places that provide an early childhood development programme and child and youth care centres.

Securities Transfer Tax Act

The Taxation Laws Amendment Act 2019 amended section 1 (to correct grammar) and 8 (to align Act with section 1 of the Transfer Duty Act and section 10 of the Income Tax Act).

Short-term Insurance Act

(i) A draft exemption notice for independent intermediaries from regulation 4.2(3) is available from the FSCA. Comment deadline 24 January 2020.

(ii) A draft exemption from policyholder protection rule 13.4 of short-term insurers that offer transport policies is available from the FSCA website. Comment deadline 30 January 2020.

Skills Development Levies Act

The Tax Administration Laws Amendment Act 2019 amended section 5 (Department of Higher education to evaluate whether employer classified under the correct SETA), 7 (refund must generally be claimed within 5 years), 11 (reference update) and 12 (reference update).

Spatial Planning and Land Use Management Act

The Draft Municipal Fiscal Powers and Functions Amendment Bill proposes amending this Act.

Standards Act

New, proposed, amended, and withdrawn standards have been gazetted for 13 December 2019 and 27 December 2019.

Note: Generally related laws may in certain circumstances involve standards, for example, section 55 of the Consumer Protection Act, the Occupational Health and Safety Act, the National Regulator for Compulsory Specifications Act, the National Health Act, the Agricultural Products Standards Act, and/or the Competition Commission and SABS MoU.

Traditional and Khoi-San Leadership Act

A commencement date must still be gazetted for the Traditional and Khoi-San Leadership Act which has, as its guiding principles, a duty on traditional and Khoi-San leaders to transform and adapt customary law and customs to comply with the relevant principles of the Bill of Rights, a duty to refrain from using allocated resources to promote or prejudice the interest of any political party, and a duty to only use allocated resources for the purposes of the functions, duties and responsibilities stated by the Act.

Traditional Leadership and Governance Framework Act

(i) The Traditional Leadership and Governance Framework Amendment Act 2 of 2019 amended the recognition of kingship and queenship councils and recognition of principal traditional councils, and introduced transitional provisions.

(ii) The Traditional and Khoi-San Leadership Act will replace this Act, once a commencement date has been gazetted.

Unemployment Insurance Act

Definitions for adoption order and prospective adoptive parent were introduced on 1 January 2020.

Unemployment Insurance Contributions Act

The Taxation Laws Amendment Act 2019 amended section 9 (refund must generally be claimed within 5 years).

Draft Upstream Petroleum Resources Development Bill

The Draft Bill proposes, amongst others that the State, through PetroSA, has a right to a 20 percent carried interest in exploration and production rights; that a Petroleum Agency be responsible for the evaluation of petroleum resources and regulation of exploration and production of petroleum resources and custodianship of petroleum geotechnical data; and that royalties, production bonus and the petroleum resource rent tax in respect of the development of petroleum resources must be determined and levied by the Minister of Finance in terms of an Act of Parliament. Comment deadline 21 February 2020.

Note: The regulatory trend seems to have been, and be, to change thresholds continually, once introduced in law.

Value-added Tax Act

(i) The Tax Administration Amendment Act 2019 amended or will amend section 20 (prescribe particulars to be contained on a tax invoice issued by a foreign supplier of electronic services by public notice), and 41B (clarify that section 41B rulings are not subject to the application and cost recovery fees).

(ii) The Taxation Laws Amendment Act 2019 amended or will amend sections 1, 8 and 50 (foreign donor funded projects), 2 (financial services include transfer of reinsurance relating to long-term

policies), 8 (VAT corporate reorganisation rules), 24 (deregistration), and 72 (align section on arrangements and decisions to overcome difficulties, anomalies or incongruities with the spirit of the other provisions of the VAT Act).

Note: Reference corrections have also been made for section 8A and 11/ schedule 1 / 2 (zero rating of sanitary towels).

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2. COMPANIES ACT: ANNUAL RETURN COMPLIANCE CHECKLIST

A notice 52 companies compliance checklist on e-services, to be completed as from 1 January 2020 before an annual return is submitted, is available from the CIPC. The notice:

- Includes a reminder of the section 215(2) offence to knowingly provide false information to the CIPC and related section 216(b) penalty; and
- Refers to compliance during the previous calendar year.

Note: The purpose of the checklist is to declare the compliance status of a company to the following sections of the Companies Act:

- *Section 4 (solvency and liquidity test);*
- *Section 15 (MoI, shareholders agreement and rules of company);*
- *Section 26 (access to company records);*
- *Section 27 (financial year of company);*
- *Section 28 (accounting records);*
- *Section 29 (financial statements);*
- *Section 30 (annual financial statements);*
- *Section 32 (use of company name and registration number);*
- *Section 33 (annual return);*
- *Section 44 (financial assistance for subscription of shares);*
- *Section 45 (loans or other financial assistance to directors);*
- *Section 50 (securities register and numbering);*
- *Section 61 (shareholders meetings);*
- *Section 66 (board, directors and prescribed officers);*
- *Section 69 (ineligibility and disqualification of persons to be director or prescribed officer);*
- *Section 70 (vacancies on board);*
- *Section 71 (removal of directors);*

- *Section 86 (mandatory appointment of company secretary);*
- *Section 90 (appointment of auditor);*
- *Section 92 (rotation of auditors);*
- *Section 94 (audit committees);*
- *Regulation 21 (registered office of company);*
- *Regulation 43 (social and ethics committee); and*
- *Schedule 1 (provisions concerning non-profit companies).*

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Employees

3. PUBLIC ADMINISTRATION MANAGEMENT ACT: DRAFT REGULATIONS

The draft regulations regarding conducting business with the State, the disclosure of financial interests and the EIDTA Unit (to apply to the public service, municipalities, their employees and special advisers) propose, amongst others:

(i) That doing business with the state does not include engaging in the activities listed in Schedule 3, such as, amongst others:

- Participation in marking, training, teaching or lecturing at public educational institutions;
- Activities undertaken as part of continued professional development; or
- The use of an employee's property or facility for public functions by Government (for example farm schools).

(ii) That every head of institution must maintain a policy on conducting business with the institution in the prescribed manner;

(iii) The manner in which any contravention of section 8(2) of the Act (employee as defined may not conduct business with the State, or be a director of a public or private company conducting business with the State) must be reported;

(iv) The requirements for a register of specified employees' financial interests, to give effect to section 8 (conducting business with the State) and section 9 (disclosure of financial interest) of the Act;

Note: Also see disclosure of head of institution, senior manager and special adviser financial interests.

(v) That a specified employee must make a full disclosure of the employee's financial interests and the financial interest of his or her spouse by completing and submitting the disclosure form.

(vi) Reasonable measures to protect confidentiality of disclosed financial interests;

(vii) Measures to address potential conflicts of interest determined from disclosure of financial interests by heads of institution, senior managers or special adviser;

(viii) That, amongst others, the head of institution must:

- Analyse ethics and corruption risks as part of the institution's system of risk management including, a life style audit of its specified employees (with the executive authority to audit heads);
- Establish, after consultation with the Unit, a policy that requires employees to report any acts of corruption, conflict of interest and unethical conduct to the head of institution or any other person designated by the head;
- Establish an information system that records the reports of corruption, conflict of interest and unethical conduct; monitors the investigation into such allegations; identifies any systemic weaknesses and recurring risks; and maintains records of the outcomes of the investigations.

Note: Also see reporting to the Ethics, Integrity and Discipline Technical Assistance Unit, and intervention by the Unit.

Comment deadline was 30 days from 29 November 2019.

GN1536 GG42861 / 29 November 2019 (Incorporated into the Public Administration Management Act and Regulations)

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Property

4. CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA: DRAFT AMENDMENT BILL🚩

The draft Constitution Eighteenth Amendment Bill proposes limiting the Constitutional right to property as follows:

(i) Adding a proviso that where land and any improvements thereon are expropriated for the purposes of land reform, a court may determine that the amount of compensation is nil; and

(ii) Adding a subsection that national legislation must set out specific circumstances where a court may determine that the amount of compensation is nil.

Note: Very high regulatory uncertainty will be created by, amongst many others:

- *The open-ended interpretations that may be given to land reform;*
- *The perception that once this Constitutional right has been whittled away a precedent is set for diluting all other Constitutional rights and introducing further future changes to this right;*
- *The fact that a far higher vote threshold is required to change a provision of the Constitution, which is supposed to be the supreme law of the land, then applies to amend a national law;*
- *The seeming ignorance of the Constitutional limitation of rights principles (including real consideration of less restrictive means to achieve the purpose); and*
- *The inevitable damage to the inherent value given to movable, immovable and intellectual property in SA.*

Comment deadline: 31 January 2020.

GN652 GG42902 / 13 December 2019

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Safety

5. NATIONAL SPORT AND RECREATION ACT: DRAFT AMENDMENT BILL

The Draft National Sport and Recreation Amendment Bill 2020 proposes, amongst others:

(i) Requiring licensing and membership and training of coaches;

(ii) Licensing of sport and recreation agents; licensing of combat sports bodies and licensees;

(iii) Licensing of fitness controlling bodies and professionals;

(iv) Making sport and recreation subject to policy objectives decided by the Minister;

(v) Vetting players, officials or managers for criminal offences;

(vi) Application by sport and recreation bodies to monopolise a particular sport code or recreation activity;

(vii) Standards for building sports facilities;

(viii) Regulations to protect children, women and people living with disabilities from exploitation;

(ix) Non-judicial inquiries that may report on safety and security measures, failure to comply with the transformation agenda, or failure to comply with the (undefined and non-cookie cutter) principles of good governance;

(x) A non-judicial Tribunal;

(xi) More offences with high penalties including offences for not meeting requirements with regards to foreign sportspersons; and

(xii) Regulations for school sport development programmes.

Comment deadline 28 February 2020.

Note: The srsa website mentions a SASCOC Committee of Inquiry (not gazetted) into the allegations of improper governance and non-adherence to the Constitution of SASCOC.

GN16 GG42946 / 10 January 2020

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6. OCCUPATIONAL HEALTH AND SAFETY ACT: ERGONOMICS REGULATIONS🚩

Application

The ergonomics regulations commenced 6 December 2019 and apply to:

(i) Any employer or self-employed person who carries out work at a workplace, which may expose any person to ergonomic risks in that workplace; and

(ii) A designer, manufacturer, importer or supplier of machinery, plant or work systems for use at a workplace.

Note: Related laws that may be worth reviewing in line with the ergonomics regulations include the Designs Act.

Ergonomic risks

Ergonomic risks are defined nebulously as a characteristic or action in the workplace, workplace conditions, or a combination thereof that may impair overall system performance and human well-being.

Note: A regulation is subject to a section of an Act, and the ergonomics consideration represent a sub-consideration of the general duty to, as far as reasonably possible, consider the safety of employees and safety of persons on the premises (and manufacturer/supplier duty where relevant). In other words, the ergonomics regulations suggest more specific means to manage the general duty, and every regulation requirement should preferably echo the key phrase and principle of the Act which is "as far as reasonably practicable".

Requirements

The ergonomics regulations, amongst others:

(i) Defines adverse health effect widely, for the purpose of an ergonomic risk assessment (which is also defined vaguely), as the causation, promotion, facilitation or exacerbation of a structural or functional abnormality, with the implication that the abnormality produced has the potential of lowering the quality of life, contributing to a disabling illness or leading to premature death;

(ii) Require that an employer must:

- After consultation with health and safety committees or representatives, if applicable, establish a training programme as prescribed for all employees, mandatories or persons other than employees who may be affected or potentially exposed to ergonomic risks; and

Note: Such training must be conducted prior to the placement of every relevant employee in the workplace. There are no transitional provisions in the ergonomics regulations to regulate training of employees placed shortly after the regulations suddenly commenced in December. Employers and other affected persons may need to consider "as far as reasonably practicable" effort to show intent and effort to comply and mitigate against any unexpected or even unavoidable penalties.

- Conduct refresher training at intervals that may be recommended by the health and safety committee or representative.

Further Note: Regulation 3 refers to health and safety representatives (ie employers with 20 or more employees) but regulation 2 refers to application to pretty much everybody who is not exempted by the Act or excluded from the Act. The regulatory position regarding, for example, refresher courses, for employers that employ less than 20 employees is not immediately clear.

Further Note: It would be highly preferable that the Department of Employment and Labour give further guidance on:

- *the parameters of the regulations (borderless responsibility is not practical or feasible or justifiable); and*
- *the possibility of being granted an exemption in cases where ergonomics risk factors may exist but are practically low in likelihood and do not reasonably warrant the costs associated with a trainer etc.*

(iii) Reiterates the duty of persons exposed to ergonomic risk factors to obey lawful ergonomic instructions- also revisit section 14 (general duties of employees at work) and section 15 (duty not to interfere with, damage or misuse things) of the Act in this regard;

Note: Regulatory requirements such as the regulation 4 employee reporting to the employer equate to a duty to report, while the Protected Disclosures Act relates to a right to report matters such as reasonably perceived occupational detriments.

(iv) Create a duty for any designer, manufacturer, importer or supplier of machinery, plant or work systems for use at work to, as far as is reasonably practicable:

- Ensure optimisation of human well-being and overall system performance, including when installing, transporting, receiving, storing or handling such items;

- Provide information, instruction and training as deemed necessary to allow potential users to achieve optimal human well-being and overall system performance during use thereof; and
- Provide information to potential users on the appropriate maintenance thereof to ensure safe operation and use - this particular requirements echoes the section 10 duty placed on manufacturers and others regarding articles and substances for use at work;

Note: Designers, manufacturers and suppliers should also consider the interaction of this law with the Consumer Protection Act duties, where applicable, for example fair value, good quality and safety requirements.

Further Note: The ergonomics regulations introduce a new concept work systems, defined as a system in which human participants or machines or human participants and machines perform work using information, technology and other resources to produce products or services for internal or external customers. This definition would have been better placed in section 1 of the Act itself to avoid confusion between the myriad regulations.

🚩 (v) Require that an employer must, after consultation with the relevant health and safety committee or representative, have a competent person conduct a prescribed risk assessment, before the commencement of any work that may expose employees to ergonomic risks, have an ergonomic risk;

Note: A competent person is defined here as a person who:

- *has in respect of the work or task to be performed the required knowledge, training and experience in ergonomics and, where applicable, qualifications specific to ergonomics, and where appropriate qualifications and training are registered under the National Qualifications Framework Act, those must be regarded as the required qualifications and training; and*
- *is familiar with the Act and the applicable regulations made under the Act.*

Further Note: It would be highly preferable that the Department of Employment and Labour give further guidance on:

- *the parameters of the regulations (borderless responsibility is not practical or feasible or justifiable) including application for employers that employ less than 20 employees and are not required to have a health and safety representative; and*
- *the possibility of being granted an exemption in cases where ergonomics risk factors may exist but are practically low in likelihood and do not reasonably warrant the costs associated with a trainer etc.*

(vi) Require that an employer must conduct the prescribed risk assessment every two years and review the prescribed risk assessment should prescribed events take place, such as:

- Technological or scientific advances allow for more effective control methods; or
- An incident occurs or medical surveillance reveals an adverse health effect, where ergonomic risks are identified as a contributing factor;

(vii) Require that employers and self-employed persons must ensure that the exposure of a person (ie not only an employee) to ergonomic risks is prevented or, where this is not reasonably practicable, adequately controlled by, as far as is reasonably practicable, removing or reducing exposure to ergonomic risks by implementing control measures in accordance with the hierarchy of controls; and

Note: It is not immediately clear what is meant with the hierarchy of controls.

(viii) Require that an employer places an employee under medical surveillance, overseen by an occupational medicine practitioner, if the ergonomic risk assessment shows such need or if an occupational medicine practitioner recommends that relevant employees be under medical surveillance (and an occupational medicine practitioner ratifies such recommendation).

Note: In text that is slightly confusing the requirement then states that an employer must ensure that the medical surveillance contemplated above must consist of:

- *an initial health examination before a new employee commences employment or within 30 days of commencement of such employment;*
- *a periodic health examination informed by the ergonomic risk assessment, at intervals up to 2 years specified by an occupational medicine practitioner; and*
- *an exit health examination informed by the ergonomic risk assessment.*

(ix) Require that every employer or self-employed person must, as far as is reasonably practicable, ensure that any control provided for the benefit of employees, complies with the regulations, is fully and appropriately implemented, and is maintained in good working order;

Note: It is not immediately clear what is meant with control or with benefit, and compliance with the regulations is complicated by its hazy parameters. Some guidance may possibly be found in section 8 general duties of employers including:

- *the provision and maintenance of systems of work, plant and machinery that, as far as is reasonably practicable, are safe and without risks to health; and*

- *taking such steps as may be reasonably practicable to eliminate or mitigate any hazard or potential hazard to the safety or health of employees, before resorting to personal protective equipment;*

(x) Introduce ergonomics specific record-keeping of up to 40 years (assessment and surveillance), government committee creation and offences.

Note: It would be highly preferable that the Department of Employment and Labour give further guidance on:

- *the parameters of the regulations (borderless responsibility is not practical or feasible or justifiable) including medical surveillance and 40 year record-keeping application for employers that employ less than 20 employees and are not required to have a health and safety representative;*
- *what is actually meant with regulation 9 control measures; and*
- *the possibility of being granted an exemption in cases where ergonomics risk factors may exist but are practically low in likelihood and do not reasonably warrant the costs associated with a trainer etc.*

GNR1589 GG42894 / 6 December 2019 (Incorporated into the Occupational Health and Safety Act and Regulations)

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7. SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT ACT

The Draft Amendment Bill 2020 proposes, amongst others:

(i) Provisions relating to testing of learners participating in sports;

(ii) Testing at recreational events and within the fitness industry;

(iii) Inspection of fitness industry venues or business premises that provide sports supplements;

(iv) Further high punitive measures (see proposed sections 17A and 17C) relating to prohibited substances; and

(v) Further prohibitions relating to prohibited substances.

Comment deadline 28 February 2020.

Note: The reference in the proposed section 17F to the Public Accountants' and Auditors' Act should be a reference to the Auditing Profession Act.

GN15 GG42946 / 10 January 2020

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8. CUSTOMS AND EXCISE ACT

The Tax Administration Laws Amendment Act 2019 amended or will amend sections:

(i) 4 (provisions relating to sharing information required to administer carbon offsets and greenhouse gas emissions reporting, and with authorised dealers in foreign exchange);

(ii) 41 (clarify that an invoice may be amended by issuing of a credit or debit note, if an amount reflected on the invoice is to be changed);

(iii) 47 (clarification that a subsection (9) tariff determination applies to identical goods, and that removals of bulk wine between excise manufacturing warehouses are excluded from compulsory tariff determination);

(iv) 76 (parity in the treatment of refunds of duty already paid, and rebates in respect of duty payable, on goods damaged, destroyed or lost due to robbery or theft); and

(v) 120 (requiring persons intending to apply to authorised dealers in foreign exchange for making advance foreign exchange payments, to first notify the Commissioner of such intention, and by requiring authorised dealers to report certain information in relation to advance foreign exchange payments).

Note: Corrections, consequential amendments and alignments have also been made to sections 1, 4 , 53, and 65.

GG42952 /15 January 2020

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9. INCOME TAX ACT: TAX ADMINISTRATION LAWS AMENDMENT ACT

The Tax Administration Laws Amendment Act 2019 amended or will amend:

(i) Sections 49E/ 50E / 64G / 64H (where more than one payment is made to the same foreign person within a period of two years from the date of the first payment, the relevant written undertaking need only be submitted once),

(ii) Section 64FA (exemption from and reduction of tax in respect of dividends in specie);

(iii) Section 64H (no need for an investor to make this declaration in so far as the dividend relates to a tax free investment); and

(iv) The Fourth Schedule paragraph 14 (clarify that the penalty may also be imposed where an employer submits an incomplete return) and 19 (exempt the executor from having to submit an estimate of provisional tax on behalf of the deceased person in respect of the period up to date of death).

Note: Reference and technical corrections have also been made to sections 3, 18A and 60.

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10. INCOME TAX ACT: TAXATION LAWS AMENDMENT ACT

The Taxation Laws Amendment Act 2019 amended or will amend sections:

(i) 1 (dividend, domestic treasury management company, gross income, identical share, provident fund, return of capital, withdrawal interest);

(ii) 7B (variable remuneration), and 7F (deduction of interest repaid to SARS);

(iii) 8 (certain amounts to be included in income or taxable income), and 8B (Broad-based employee share plan of an employer);

(iv) 8E (dividends derived from certain shares and equity instruments deemed to be interest), and 8EA (dividends on third-party backed shares deemed to be income);

(v) 8F (interest on hybrid instruments deemed to be dividends in specie), and 8FA (hybrid interest deemed to be dividends in specie);

(vi) 9D (net income of controlled foreign companies), and 10 (exemptions);

(vii) 10C (exemption of non-deductible element of qualifying annuities), and 12J (deductions for expenditure incurred in exchange for issue of venture capital company shares);

(viii) 12K (repeal of exemption of certified emission reductions), and 12L (allowance for energy efficiency savings);

(ix) 12R (special economic zones), and 22 (amounts to be taken into account in respect of values of trading stocks);

(x) 22B (dividends treated as income on the disposal of certain shares), and 23C (reduction of cost or market value of certain assets);

(xi) 23I (prohibition of deductions in respect of certain intellectual property), and 23M (limitation of interest deductions in respect of debts owed to persons not subject to tax);

(xii) 24I (gains or losses on foreign exchange transactions), and 24O (incurral of interest in terms of certain debts deemed to be in the production of income);

(xiii) 25BB (taxation of REITs), and 28 (taxation of short-term insurance business);

(xiv) 29A (taxation of long-term insurers), and 30 (public benefit organisations);

(xv) 30A (recreational clubs), and 31 (tax payable in respect of international transactions to be based on arm's length principle);

(xvi) 40CA (acquisitions of assets in exchange for shares or debt issued), and 41 (special rules relating to certain transactions - general matters);

(xvii) 42 (asset-for-share transactions), and 44 (amalgamation transaction);

(xviii) 45 (intra-group transactions), and 47 (transactions relating to liquidation, winding-up and deregistration);

(xix) 64EA (liability for dividends tax), and 64G (withholding of dividends tax by companies declaring and paying dividends);

(xx) 64H (withholding of dividends tax by regulated intermediaries).

The Amendment Act also amended or will amend:

(i) The First Schedule paragraph 12;

(ii) The Second Schedule paragraph 2, 2D and 6;

(iii) The Fourth Schedule paragraph 2; and

(iv) The Eighth Schedule paragraph 12A, 19, 20, 35, 38, 43, 43A, and 56.

Note: Reference updates, stylistic changes and textual corrections have also been proposed to sections 1 (REIT), 7C, 9HA, 9HB, 11, 12B, 13bis, 18A, 20A, and 23O, as well as the Fourth Schedule paragraph 2 and 28, and the Eighth Schedule paragraph 1, 29, 40, and 80.

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11. TAX ADMINISTRATION ACT: TAX ADMINISTRATION LAWS AMENDMENT ACT🚩

The Tax Administration Amendment Act 2019 amended or will amend sections:

(i) 11 (give SARS sufficient time to investigate dispute resolution without litigation);

(ii) 91 (original assessment by SARS based on an estimate);

(iii) 100 (assessment or decision final if appeal filed and withdrawn);

(iv) 191 (clarify when SARS may set-off refunds or make an assessment on an estimate if no return submitted or required);

(v) 210 / 212 (measures to address offshore arrangements to circumvent CRS reporting);

(vi) 234 (criminal sanction for any document required to be submitted under a tax Act that is erroneous, incomplete or false); and

(vii) 256 (tax compliance third party access and de minimis threshold).

Note: Reference updates related to Legal Practice Act and textual corrections have also been made in sections 12, 42A, 46, 64, 110, 111, 134, 139, 141, 223, 240A, 246, and 262

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